

DEPARTMENT OF STATE A/CDC/MR

OUTGOING AIRGRAM

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AMEMBASSY,

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TOKYO.

A-50, May 22, 1952.

SUBJECT: FCN Treaty informal discussions. EMBD'S I,
April 30.

This continues DEPT's comments on the enclosures transmitted under cover of reference despatch.

Enclosure 3 (seventh meeting)

Article XI, paragraph 3. The word "residents" may be deleted.

Article XI, paragraph 5. The Japanese proposal to revise clause (c) on the model of the Colombia Treaty is acceptable (wording as set forth at bottom page 3, enclosure 3).

Article XII, paragraph 2. It is not correct to say that the Parties would be no more obligated under this paragraph than under the Articles of Agreement of the IMF. The latter instrument does not contain a rule like that in the first sentence of this paragraph. The second sentence, moreover, is so phrased as to circumscribe the discretionary rights a Party has under certain sections of the Articles of Agreement (notably Articles VI (3) and XIV (2) thereof), such discretionary rights being neither "obligations to" the Fund nor "specific" authorizations or requests of the Fund. The purpose of the exchange provisions of the proposed treaty is not merely to repeat the IMF Agreement; rather it is to build stronger bilateral commitments. The most important, but not the only, of these stronger commitments is, of course, represented by paragraph 3.

Mr. Yukawa is correct in stating that the determination of the adequacy of its monetary resources is

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for each country to determine, but provided always that such determination is not capricious and is in conformity with the relevant provisions of the Treaty. The presumption in treaty commitments is that each country acts to live up to its treaty obligations; but this presumption, while a strong one, is rebuttable and may be contested in the case of a particular action which the other country has good reason to believe improper.

With reference to the discussion concerning the Japanese system of varying percentage standards for remittances (bridging pages 6 and 7 of enclosure 3), the Department notes that emphasis was placed entirely on absence of discrimination in the application of the standards. (It is presumed to be understood that differentiations among different currencies, based on their respective availabilities, are allowable.) This is a valid point. But it is also true that paragraph 3 requires more than non-discrimination, because it requires "reasonable" remittances for all; and merely observing non-discrimination does not necessarily exhaust the requirement of reasonableness. The Japanese system, therefore, would fail to meet the treaty test unless it was on the whole reasonable, and represented Japan's best efforts, in the light of all the circumstances, to accommodate all legitimate claimants under paragraph 3, according to a reasonable classification. The Department assumes that the Embassy has satisfied itself that the Japanese system does indeed meet all the requirements of paragraph 3; and that the Japanese comprehend all the implications of the paragraph. It may be further noted that the Article not only regulates the process of tightened restrictions when such become necessary, but visualizes also the relaxation of existing restrictions as rapidly as circumstances warrant.

Enclosure 4 (eighth meeting). No comment.

Enclosure 5RESTRICTED

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Enclosure 5 (ninth meeting)

Article XII. As above indicated, the Parties would not under the treaty retain the complete freedom of action over capital movements provided in Section 3, Article VI of the IMF Agreement. Rather, so far as their bilateral relations were concerned, the Parties would agree in the treaty to treat capital movements as set forth in Article XII, paragraph 3 (with such qualifications, of course, as are set forth in the treaty). This is an important feature of the Article that should not be overlooked.

Enclosure 6 (tenth meeting)Article XII. No comment.Article XIII. No comment.Article XIV. No comment.

This concludes the Department's reply to reference despatch. Department regrets that preoccupation of staff recently with Senate Committee hearings on six treaties signed last year has somewhat delayed its reply. The hearing revealed the existence of some concern in connection with the treaties, over the usual treaty rule on the professions, especially where treated in a separate paragraph dealing exclusively with the professions, as in Department's initial standard proposals to Japan. Hence it will be advisable, as suggested in the companion airgram, to adopt the technique of the Colombia Treaty in connection with professional activity, if that technique is adopted with respect to the other activities (Article VII). Pending the outcome of the Senate's consideration of the usual treaty rule on professions, moreover, it would be prudent to leave open the treaty's final disposition of the substance of any rule on the professions.

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